

III. REMARKS

Claims 1-4, 6-8, 10-12, 14-19, 21-23, 25-27 and 29-31 are pending in this action. By this Amendment, claims 1, 6, 8, 14, 16, 21, 23, 29 and 31 have been amended, while claims 5, 13, 20 and 28 have been cancelled. The amendments and cancellations are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the objections and rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the above amendments and following remarks is respectfully.

In the Office Action, claims 1-8, 10-23 and 25-31 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Eden (US Publ. No. 2002/0184361) in view of Peterson et al. (US Publ. No. 2004/0010584), hereinafter “Peterson”, and in further view of Reps et al. (US 6070190), hereinafter “Reps.” Applicants respectfully request withdrawal of the rejections.

Currently amended claim 1 reads in part:

“... wherein the specified response time is calculated based on a range of response times determined by an average query completion time and a standard deviation of an average query completion time, the average query completion time determined using the response time only in the case that the network resource is available; and dynamically updating the average query completion time and the specified response time by repeatedly querying the network resource.” (Claim 1, and similarly recited in claims 8, 16, 23 and 31)(Emphasis added).

Applicants respectfully submit that the cited references fail to disclose, *inter alia*, the

above-referenced features of claim 1. In its most recent Office Action, the Office acknowledged that Eden fails to disclose “updating an average query completion time using the response time.” (Office Action at 5, rejecting Applicants’ claim 5; Eden at para. 33). Applicants have incorporated the limitations of claim 5 into claim 1, and have further specified “dynamically updating the average query completion time and the specified response time by repeatedly querying the network resource.” Eden’s discussion of updating a timeout period is distinct from the “dynamically updating” of claim 1, and the “specified response time” described in claim 1 is not contemplated in Eden. As such, Eden does not disclose, “dynamically updating... the specified response time by repeatedly querying the network resource.” Accordingly, Applicants request withdrawal of the rejections.

Neither Peterson nor Reps overcome the deficiencies of Eden, discussed above. As such, Applicants respectfully request withdrawal of rejections based upon combinations of Peterson, Reps, and/or Eden.

The dependent claims are believed allowable for the same reasons stated above, as well as for their own additional features.

Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Examiner’s interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Examiner’s analysis, combinations, and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Examiner’s combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

Should the Examiner believe that anything further is necessary in order to place the application in better condition for allowance, the Examiner is requested to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

/Matthew B. Pinckney/

Matthew B. Pinckney
Reg. No. 62,727

Date: 23 December 2008

Hoffman Warnick, LLC
75 State Street, 14th Floor
Albany, New York 12207
Phone: (518) 449-0044
Fax: (518) 449-0047